IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
Writ Petition No.5449 of 1990

Annappa Jivappa Kamatgi Petitioner
Vs.
Shri Swami Vivekanand Shikshan
Sanstha through its Secretary & anr. Respondents

Mr.K.S.Patil for petitioner.
Mr.P.D.Dalvi for Resp.No.1.

CORAM: B.H.MARLAPALLE,J.

August 22, 2006.

ORAL JUDGMENT:

1. This petition impugns the judgment and order of the University and College Tribunal passed on 4/4/1990 thereby dismissing Appeal No.3 of 1990 filed by the petitioner under Section 42B of the Shivaji University Act, 1974. In the said order the petitioner had challenged the transfer order dated 3/12/1988 issued by the Respondent no.1 - Employer transferring him from the post of Lecturer in Vivekanand Senior College, Kolhapur to Purandar Junior College at Saswad as a Junior Lecturer. As per the petitioner this transfer from the post of Lecturer in the Senior College to the post of Lecturer in the Junior College amounted to reduction in post and, therefore, he sought the remedy by

filing an appeal under Section 42B of the Shivaji University Act, 1974.

2. The petitioner passed his B.Sc. examination in First Class from the Shivaji University in 1971 and he obtained his M.Sc. Degree in 1973 from the said University with B+ grade. Subsequently he obtained his B.Ed. Degree in 1978 from the Pune University with B+ grade and also enrolled his name for Ph.D. with the Pune University. On completion of his M.Sc. degree in 1973 he was appointed as an Assistant Teacher by Shivaji Vidyalaya at Bhor which was run by the Respondent No.1-Society and he worked there upto 1980. By order dated 23/6/1980 he came to be transferred by the Respondent No.1 from Chh. Shivaji Higher Secondary School at Bhor to the Higher Secondary School at Saswad, Taluka Purandar, Dist. Pune with effect from 30th June 1980.

3. In the appeal before the Tribunal the petitioner-appellant had pleaded that when the impugned transfer order was issued he was drawing the monthly salary of Rs.780/- in the pay scale of Rs.700-1600 and on his transfer he was placed in the pay scale of Rs.365-760 and that too without

protecting his basic salary and, therefore, the impugned transfer order amounted to reduction in post. He also pointed out that the pay scale prescribed for the post of Lecturer in the Junior College was Rs.600-1030 at the relevant time and even the said pay scale was not granted to the petitioner. In its written statement the management conceded that the petitioner was placed in the pay scale of Rs.365-760 on his transfer by the order dated 3/12/1988. The management had submitted before the Tribunal that the petitioner was appointed against the post reserved for OBC for the academic years 1986-87, 1987-88 and in the year 1988-89 a reserved category candidate being made available, it was left with no alternative but to revert the petitioner back to his original post of Lecturer in the Junior College at Saswad. The respondent - management thus accepted that the petitioner was a permanent employee and on filling in the post reserved for OBC in the Vivekanand Senior College at Kolhapur, the petitioner could not be continued as a Lecturer in the said college beyond 3rd December 1988 and, therefore, he was sent back to his original post from where he was promoted on his appointment as Lecturer by the appointment order dated 14th July 1986. The School

Tribunal while dismissing the appeal noted that though the petitioner was appointed on probation by the appointment order dated 14th July 1986 the same was subject to approval by the Shivaji University and the said University vide its letter dated 6th December 1986 had clearly stated that the appointment of the petitioner was approved for the academic year 1986-87 against the vacancy reserved for OBC and the same was the case for the subsequent year and in the year 1988-89 the petitioner could not be continued as a reserved category candidate was available. As per the School Tribunal the petitioner not having been appointed on probation, the impugned transfer order dated 3/12/1988 did not amount to reduction in rank/post.

4. In addition to the points agitated before the Tribunal the Petitioner has also averred that Mr.V.C. Mahajan who was appointed on the same date as the petitioner was and that too against a reserved post approved only for the academic year 1986-87, was younger in age and, therefore, he ought to have been treated as junior to the petitioner and if he was so treated, Mr.Mahajan could have been found to be surplus rather than the petitioner. He has also

pointed out that as on 3/12/1988 there were vacancies under the Respondent No.1 - Society in different colleges for the post of Lecturer in Senior College and in support of this contention he has cited the appointment of Ms.Shubhangi Shrinat Madhale made on 3/12/1988 as a Lecturer in the Arts, science and Commerce Senior College at Ichalkaranji and in the subject of Electronics and that too against a post reserved for OBC under the Respondent No.1-Society.

5. While admitting this petition a Division Bench of this Court by way of interim relief had directed that the petitioner shall be paid the salary in the pay-scale of Rs.700-1600 from 5th December 1988 to 30th June 1989 and the learned counsel for the petitioner, on taking instructions, stated that from 1st July 1989 the petitioner was not paid the salary in the pay scale of Rs.700-1600 and in fact he was continued to be paid salary in the pay scale of Rs.365-760.

6. The impugned order of transfer stated that the petitioner was transferred as Lecturer in Electronics in Vivekanand Senior College at Kolhapur to Purandar Junior College at Saswad as a Junior Lecturer with

effect from 4th December 1988. The pay scale at the relevant time for the post of Lecturer in Senior College was Rs.700-1600 and for the post of Lecturer in Junior College it was Rs.600-1050. There is no dispute that in the academic year 1988-89 the petitioner was appointed in the basic salary of Rs.780 per month in the pay scale of 700-1600 and the same was directed to be protected by the interim order of this Court upto June 1989 i.e. when the petitioner approached the Tribunal and filed the appeal. Even in the affidavit-in-reply filed in this petition no explanation has been furnished by the Respondent no.1 - Management as to why the petitioner's salary before the transfer was not protected. It is perhaps the case of the respondent no.1 that the petitioner was reverted to the post of Lecturer in a Junior College and even if that is accepted he ought to have been offered the salary in the pay scale of Rs.600-1050 and not in any case in the pay scale of Rs.365-760.

7. Even otherwise there was no justification in issuing the impugned transfer order and the cases cited by the petitioner of Mr.Mahajan and Mrs. Madhale are required to be considered. The first

advertisement released by the Respondent no.1 was dated 30/4/1986 and published in a Marathi daily "Kesari" on 19/5/1986 inviting applications for different posts in different educational institutions run by the Respondent No.1 - Society. In the subject of Electronics it advertised two posts and both of them were shown to be reserved for NT (OBC). As per the Society against the said two reserved posts the petitioner and Mr.Mahajan were appointed and the approval granted by the University initially by its letter dated 4/10/1986 and subsequently by its letter dated 3/12/1986 supports this contention. For the next academic year the respondent no.1 released fresh advertisement on 24/4/1987 for various posts to be filled in different educational institutions run by it and in the subject of Electronics two posts of Lecturers reserved for OBC were included in the said ad. Surprisingly the respondent no.1 selected three candidates viz. Mr.V.C. Mahajan, the petitioner and Mr. R.R. Mudholkar and while submitting a proposal to the University for approval, Mr.Mahajan was shown against the vacancy of open category and the other two appointees were shown against two posts reserved for OBC. In the advertisement published on 24/4/1987 the third open category post was not shown. The

University vide its order dated 28/9/1987 approved all the three posts but Mr.Mahajan's appointment was approved on regular basis on the condition that he will obtain M.Phil. degree in eight years whereas the other two candidates (petitioner included) were approved for one academic year against the post reserved for OBC. In the academic year 1988-89 the respondent no.1 released yet another advertisement on or about 30th April 1988 and showed three posts of Lecturer in Electronics to be filled. Two were shown as full time and reserved for OBC but in respect of the third post it was not indicated whether it was full time or on part time basis. It selected three candidates and Mr.R.R. Mudholkar, who in the earlier academic year was appointed against a reserved vacancy, was shown to have been selected against a seat "not reserved" and the petitioner and Ms. Madhale were shown to have been appointed against two posts reserved for OBC. It is not explained how Mr.Mudholkar in the year 1988-89 or for that matter Mr.Mahajan were shown to have been appointed against the post "not reserved". In the affidavit-in-reply filed before this Court it has been stated on behalf of the respondent no.1 that the Selection Committee had selected both these Lecturers in the two academic

years against the post "not reserved" and this submission is totally fallacious. The Selection Committee's job is to make a merit list of the selected candidates and it cannot select a particular candidate against a post "not reserved" (open category). Thus in both the academic years the respondent no.1 did not act fairly and the allegation of the petitioner that it showed favouritism to Mr.Mahajan at the first place and subsequently to Mr.Mudholkar cannot be discarded. At the same time the approval order dated 29/9/1988 issued by the Shivaji University granting approval indicated that the petitioner was approved for the whole of the academic year 1988-89 against the reserved post and so was the case of Ms.Madhale and if that be so there is no explanation coming forward why the impugned order was issued in the middle of the academic year on 3/12/1988. There is no doubt that the academic year 1988-89 would expire on 30th April 1989. Even otherwise if the post at Vivekanand College was filled in by a candidate from OBC, there is no reason why the petitioner could not have been transferred to the College at Ichalkaranji in the post of Lecturer (Electronics) rather than appointing a candidate from outside. In the return filed in this petition no

explanation has been furnished by the respondent no.1 in this regard.

8. It has to be, therefore, held at the threshold that the Management by the impugned order dated 3/12/1988 effected reduction in the post of the petitioner by not offering him the prescribed pay scale for the post of Lecturer in a Junior College and secondly it, for no justifiable reasons, proceeded to appoint Mr.Mahajan and Mr.Mudholkar by by-passing the claim of the petitioner against the open category post available in the very same subject and thirdly when a post of Lecturer (Electronics) against a reserved category was available in the college at Ichalkaranji, the petitioner was not considered and a fresh candidate from outside was appointed. It was perhaps the apprehension of the respondent no.1 - Society that having completed three years on temporary appointment against a reserved post the petitioner might claim permanent appointment or the the appointment to be regularised on permanent basis. The Tribunal fell in gross errors in not taking into consideration the pay scale offered to the petitioner on account of the impugned transfer order and the fact that the Management proceeded to

fill in the open category post in the very same subject by by-passing the petitioner's claim and more so when he was the senior most amongst the temporary appointees in the subject of Electronics.

9. In the premises this petition succeeds and the same is hereby allowed. The impugned judgment and order is hereby quashed and set aside. Appeal No.3 of 1990 is hereby allowed partly and consequently the transfer order dated 3/12/1988 will have to be modified by directing the Respondent No.1 that the petitioner shall be offered the pay scale of Rs.700-1600 from 1st July 1989 onwards and of course he shall be entitled for the revision in pay scale as applicable to the post of Lecturer and revised at the instance of UGC or the State Government from time to time. The arrears in salary shall be calculated and paid to the petitioner by the respondent no.1 within a period of three months from today. Rule made absolute accordingly.

(B.H.MARLAPALLE,J.)